

No. 22,194

IN THE

United States Court of Appeals  
For the Ninth Circuit

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SEQUOIA MACHINERY, INC., a Corporation,  
and KAWEAH COMPANY, a Corporation,  
*Appellants,*

VS.

J. RODERICK JARRETT, Trustee of the Estate  
of James C. Clark, Bankrupt,  
*Appellee.*

AMICUS CURIAE BRIEF OF  
ALLIS-CHALMERS MANUFACTURING COMPANY  
SUPPORTING APPELLEE

---

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**AMICUS CURIAE BRIEF OF  
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SUPPORTING APPELLEE**

## I

## WHAT THIS CASE IS ABOUT

Appellants filed financing statements covering grain harvesters with the Secretary of State.

The Bankruptcy Referee ruled that grain harvesters were equipment used in farming operations as defined by Section 9401 (1)(a) of the Commercial Code and that the proper place to file, as directed by the Code, was in the county of the residence of the owner. Appellants appealed first to the United States District Court, Eastern District of California, M. D. Crocker, District Judge. The Judge's Order Affirming the Referee's Order contains the following language:

“The only matter here on review is the construction of Section 9401 (1)(a) of the California Commercial Code, particularly ‘equipment used in farming operations.’

“I think the Referee's determination in this matter was reasonable, as a harvester is used exclusively in harvesting agricultural crops, which is a ‘farming operation.’ It is immaterial that the services were rendered by a commercial harvester, an independent contractor, and not by a farmer-owner of such equipment. The services rendered by debtor were performed as an incident to ordinary farming operations and hence come within the broad language employed in Section 9401 (1)(a) of the California Commercial Code. If the legislature intended that this provision apply only to farmer-owners of agriculture equipment it would have so stated. The language of the pertinent provision is not so restrictive. There-

fore, this Court concludes that the provision embraces all transactions that involve equipment used in farming operations.

“Therefore the Referee’s order is affirmed . . .”

Appellants are in the Ninth Circuit Court asking the Court to reverse Judge Crocker’s decision. Appellee asks that the decision be sustained.

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## II

### GRAIN HARVESTERS ARE EQUIPMENT USED IN FARMING OPERATIONS

The grain harvesters, the subject of this controversy, are called “combines.” They are made for the sole purpose of harvesting grain.

The harvesting operation can only be performed on the farm.

The combine severs the grain heads in the field, separates the grain from the straw and chaff and delivers the harvested grain to sacks or a bin from which the grain is hauled from the field on the farm to a point of storage.

Harvesting grain in the field on the farm is, of course, a farming operation, and the harvester, manufactured solely for this use and serving no use off the farm, is equipment used in a farming operation.

Appellants contend that harvesting grain is not a farming operation because the owner of the harvester is paid by the acre.



No such limitation was included in the definition used in Section 9401, "equipment used in farming operations."

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### III

#### STATEMENT OF INTEREST OF ALLIS-CHALMERS

The interest of Allis-Chalmers Manufacturing Company, Farm Equipment Division, in the pending case arises out of the bankruptcy of Benjamin F. Laymon, No. F-2609, in the United States District Court, Eastern District of California. A farm equipment dealer of Allis-Chalmers Manufacturing Company at Fresno sold Benjamin F. Laymon three tractors and four windrowers. The windrowers are a power driven mower with a built-in attachment to move the hay into the windrow. This farm machinery was sold on a Conditional Sales Contract and *a Financing Statement was duly filed in the County of Fresno, the residence and place of the farm of Mr. Laymon, the purchaser.* Mr. Laymon filed bankruptcy. It appeared from the evidence that he also used the equipment to do contract work for neighbors.

The Referee took the position that the decision to be made by the Ninth Circuit Court in this case, Sequoia Machinery, Inc., et al. v. J. Roderick Jarrett, et al., No. 22194, might, if Judge Crocker is reversed, permit the Trustee to take the equipment and sell it for the benefit of the general creditors. The unpaid balance due Allis-Chalmers Manufacturing Company is Fifty-two Thousand Dollars (\$52,000).



Allis-Chalmers has 3,000 farm equipment dealers in the United States, most of whom are within the area covered by the 39 states which have adopted the second or third option of Section 9401 of the Commercial Code, which is the section directing the filing of financing statements covering equipment used in farming operations in the county of residence of the farmer.

In California alone, Allis-Chalmers has more than one and a half million dollars unpaid on financing statements filed in the office of the County Recorder in accordance with Section 9401 of the Commercial Code, the place of residence of the debtor involved.

Allis-Chalmers may lose Fifty-two Thousand Dollars (\$52,000.00), the unpaid balance due from Benjamin F. Laymon, and have to revise its entire system of finance under the Commercial Code to meet the ruling of the Ninth Circuit Court if Judge Crocker is reversed.

See stipulated set of facts in the matter of the bankruptcy of Benjamin F. Laymon, No. F-2609, in the United States District Court, Eastern District of California, attached as an appendix exhibit.

**THE SECTION AS IT NOW READS:****Chapter 4****FILING**

**§ 9401. Place of Filing; Erroneous Filing; Removal of Collateral.** (1) The proper place to file in order to perfect a security interest is as follows:

(a) When the collateral is equipment used in farming operations or farm products other than crops, or accounts or contract rights arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county recorder in the county of the debtor's residence or if the debtor is not a resident of this State then in the office of the county recorder in the county where the goods are kept;

(b) When the collateral is crops or timber to be cut, then in the office of the county recorder in the county where the land on which the crops are growing or to be grown or on which the timber is standing is located;

(c) In all other cases, in the office of the Secretary of State.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this division and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this State continues effective even though the debtor's residence or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) If collateral is brought into this State from another jurisdiction, the rules stated in Section 9103 determine whether filing is necessary in this State.

(5) The county of residence of an organization is the county in which it has its chief place of business in fact. (Stats. 1963, c. 819, § 9401.

**What the Appellant Wants the Court to Add to Section 9401**

Provided, that if the equipment used in farming operations is not used on the ranch of the farmer but is used for hire in a farming operation on another farm, it is not equipment used for farming operations as governed by Section 9401(1)(a) but filing shall be under Section 9401(1)(c) in the office of the Secretary of State.

See: (“Summary of Appellants’ Position,” page 8, Appellants’ Brief).

Throughout this brief, counsel for Amicus Curiae has called this proposed additional “legislation requested of the Court. Section 9401(1)(a) appearing on page 6 does not require interpretation. The language is plain and the proposed addition is not an interpretation but it is a change in the requirements as set forth by the legislature in the section.

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#### IV

##### WHERE FINANCING STATEMENTS ARE TO BE FILED

If any banker, lawyer, farmer, salesman, or interested person wants to know where to file a financing statement, they would look in the index of the Commercial Code. On page 925 of the index they would find “PLACE, Security interest, filing, Section 9401.” Turning to 9401, we find it is the first section of Chapter 4.

Chapter 4 is entitled “FILING.” Section 9401, the first section under Chapter 4, begins with the words “PLACE OF FILING.” Section (1) reads: “*The proper place to file* in order to perfect a security interest is as follows: . . .” Then follows subsection (1)(a), the first line of which reads, “When the *collateral is equipment used in farming operations*, . . . in the office of the county recorder in the county of the debtor’s residence . . .” Subsection (3) of 9401 sets out the rule where the condition is changed after the filing. It reads:

“A filing which is made in the proper place in this State *continues effective* even though the

debtor's residence or the location of the collateral or *its use*, whichever controlled the original filing, *is thereafter changed.*"

No other section of the Code has a title "*PLACE OF FILING.*"

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## V

### WHAT THE WORDS "COLLATERAL IS EQUIPMENT USED IN FARMING OPERATIONS" MEAN

In the operations of Allis-Chalmers Manufacturing Company, there are agricultural sales branches and industrial sales branches. It became necessary to determine which was which when there was overlapping uses such as a mower used along a highway or a crawler tractor which could be used on a farm or to build a highway. The present administrative assistant of the agricultural division, covering the areas of California, Arizona and Nevada, evolved a definition which was workable and which is used to distinguish material which is equipment used in farming operations from the industrial division material. The definition reads:

"All equipment or implements, used from the beginning in the preparation of the soil or seed bed, through the harvest for the growing of grain, feed, seeds or fiber, raising or care of livestock or poultry on a farm, is equipment used in farming operations."

This definition clearly meets the common meaning of the words "equipment used in farming operations."



By this definition, equipment used off the farm is not farm equipment, but it must be remembered that subsection (3) of Section 9401 provides that if it is first used in a farming operation, a filing made in the proper place continues effective even though the use changes.

When the index refers only to Section 9401 of the Commercial Code as Section governing the place for filing and the title of Chapter 4 is "FILING" and the title of Section 9401 begins "PLACE OF FILING," there being no other section to which we are directed to look for a place to file, the logical conclusion is that the language of Section 9401 is the place we are to look if we want to know where to file.

It is neither logical nor reasonable to believe that the legislature intended to conceal the place of filing in other sections with no guideline in the way of title or index to such sections.

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## VI

### USE IS A PERMANENT IDENTIFIABLE THING

If the test proposed by appellants that the equipment be used on the farmer's farm or it is not farming equipment, or stated another way, if the equipment is used off the farmer's farm for hire in a farming operation, it is not equipment used in a farming operation, we have a transient test. On one day, or at one hour, the equipment is used on the farmer's farm in a farming operation, and the next half day it may be used on the neighbor's farm for pay. Is a

plow or a mower or a rake no longer a plow or a mower or a rake because it is used on the neighbor's farm? The legislature in writing Section 9401, did not say so, nor did they say anything that indicated that there was an exception if the equipment was used on the neighbor's farm for hire.

Use is something perceptive to the eye. It is a simple method of classification. In practically every instance, farm machinery has only one use, that is, in farming operations. The different implements are commonly known and understood and readily identified by bankers, farmers and machinery sales agents as "equipment used in a farming operation." It seems to the writer that no one in my county would think of a plow or a mower or a disk or a harrow or a hay rig or a hay baler or a corn picker as anything but "equipment used in a farming operation." This same, common understanding of the use of this language exists in every agricultural county in the State. It has the same meaning to farmers, bankers, equipment salesmen, workers on farms and to people generally familiar with the farming industry.

Method of payment for the use as a test for classification is not something that is known when the piece of equipment is identified at the bank when a loan is made. It is something that can vary from day to day, the equipment being used on the farmer's own ranch today and put out for hire tomorrow. Obviously, there are many reasons for the legislature not to add this method of determining what is farm equipment to Section 9401. How is the lender going to prove



whether the equipment was used on the farmer's farm or on the neighbor's farm for hire two or three years later when the question could be raised in a legal controversy?

If these good reasons applied to the legislature and they did not add the limiting words asked for by appellants they apply doubly to a Court that is asked to legislate by interpretation and establish a rule which will soften a hardship in appellants' case, but does not suit the language of the Code as commonly used and understood.

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## VII

### SECTION 9401 IS A WORKING SECTION EVOLVED OUT OF USE

Section 9401 of the Commercial Code is a working section evolved out of use and experience. It is not a perfect section, but it is the best that the legislators have been able to evolve out of experience as a means of classifying goods where county filing governs.

The fact is that none of the legislators in the nine western states and, insofar as I have been able to find, in no other state, have put a limitation in the section in the language sought by appellants here.

The legislatures have not been able in this case, as in many cases, to make a law that will fit every hardship that arises, but has widely used a generic, rather than a limiting, description for local filing.

The word "equipment" is as broad and generic a word as can be found. The word "used" is as broad

and generic a word as can be used. The words "farming operations" are words of common use and understanding.

These words put together would be interpreted by anyone in the common use of language to mean what they say, without exceptions, without limiting words which appellants desire the Court to add to the section. Limiting words of the type sought by appellants were defined by President Theodore Roosevelt as "weasel words." He said: "Weasel words are words that rob other words of their meaning." The legislature did not use weasel words in drawing the section.

This becomes of great weight in California because it is one of the last of 39 states to adopt Section 9401 and the benefit of experience and problems arising in other states was available to the committee studying the Code for use in California and it was determined, as evidenced by the enactment by the legislature, to use the broad generic terms adopted.

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## VIII

### BANKS LOAN LARGE AMOUNTS TO FARMERS TAKING FINANCING STATEMENTS ON EQUIPMENT USED IN FARMING OPERATIONS

Let us suppose that John Doe comes to the bank to borrow money and he offers the instruments which he is using to farm with as security. The banker says, "How are they being used?" Doe answers, "This morning I am finishing the harvesting on my own

place, this afternoon I am going to harvest Smith's corn for \$15.00 an acre, and tomorrow I will be back in my other field, and the next day I'm going over to harvest Jones' corn." Is the test to be *use* or is the test to be *method of pay*, that is, was the equipment used for hire? *If the test is use for hire, we run instantly into confusion. What is the controlling fact for filing? The use at the hour he applied to the banker, the use at the time he signed the Chattel Mortgage and Financing Statement, or the use that is being made at the time the Financing Statement is recorded?*

Under the rule proposed by appellants (see page 8 of appellants' brief) since the equipment is used on occasions to do work for hire, it cannot be "equipment used in farming operations," but since it is also used on the man's own farm, it is the "equipment used in farming operations." In other words, it is equipment used in farming operations in the morning and commercial equipment in the afternoon, equipment used in farming operations on Monday and commercial equipment on Tuesday depending where it is being used and what it is being used for. This leads to the ridiculous situation where no one can know after the instrument is filed what the equipment was being used for at the time of filing and no one will know where to file.

Many, many users of equipment used in farming are farmers who own the equipment on their own farms and also serve neighbors on adjoining farms for hire.

These facts raise no legal question at all if we use the plain language of Section 9401 of the Commercial Code, but utter confusion if the Courts amend Section 9401 by adding limiting words as asked for by appellants.

Farming practices are changing. Crop rotation, usually cotton followed by alfalfa or permanent pasture, occurs approximately every three years in good farming practice.

This means that the farmer needs to have available a complete set of hay equipment and a complete set of cotton equipment. The vastly increasing cost of equipment can be illustrated. A tractor, not the largest crawler type, now costs approximately \$80,000.00 without implements. A cotton picker costs from \$18,000.00 to \$25,000.00. Horse hay mowers used to cost about \$60.00. A modern mower with hay treatment attachments costs about \$4,000.00. Planters with the necessary fertilizing attachments now cost several thousand dollars.

This great increase in capital investment, necessary to keep down labor costs, creates a problem for any small farmer. He cannot afford to own all of the equipment necessary in his rotation of farming operations.

The practice of one farmer buying some of one type of equipment and another farmer buying some of the other types of equipment, with exchanges on a pay-by-the-acre basis as the fairest method of computing the recompense, is becoming more and more common.



If farmer Jones is going to the bank to finance for next year's crops and his hay mower with windrower attachment is being used by farmer Smith, a neighbor, for so much an acre, it is farm equipment used in farming operations as Section 9401 now reads.

But, if the amendment to the section, which appellants are requesting, is made, it is not farm equipment during the time it is being used on the neighbor's farm for hire, but becomes farm equipment again when it is returned to Jones' farm.

When use is the test, the type of equipment being visible and permanent, Section 9401 is easy to apply and filing will be in the County. If method of payment for use is the test, as asked for by appellants, the place for filing will be with the Secretary of State. Not only will this vary from day to day, but the lender will not, after a few months, be able to prove which use was effective the day he made the loan, on Jones' farm or Smith's, the neighbor's farm, for hire. So, we have exchanged certainty for uncertainty. The legislative enactment, as it stands, is sounder than the proposed amendment.

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## IX

### WHERE THE USE CHANGES, THE LEGISLATURE HAS PROVIDED A RULE

The traveling track layer tractor, which was first engaged in farming operations and then in timbering, used as an illustrative argument on page 16 of appellants' brief, would be legally stopped in its tracks

as far as filing is concerned by subsection (3) of Section 9401 which provides that if the filing was in accordance with the use at the time of filing, change in use does not affect the validity of the filing.

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## X

### A HARDSHIP CASE—WHO IS TO TAKE THE LOSS?

Part V of appellants' brief is devoted to the hardship which will result if the judges of the Ninth Circuit Court do not change the language of Section 9401. Appellants filed with the Secretary of State and stand to lose \$32,000.00 by failing to file where Section 9401 directs, in the county of the residence of the farmer. On pages 4 and 5 of this brief, the interest of Allis-Chalmers Manufacturing Company is set forth. If the Court adopts the amendment asked for by the appellants to Section 9401, appellants will save \$32,000.00, but Allis-Chalmers Manufacturing Company, and its dealers, stand to lose \$52,000.00. Additionally, Allis-Chalmers has a million and a half outstanding and similar financing statements all filed in the counties where the debtors resided who purchased the farm equipment. Some of this equipment will be used by the farmers for hire on their neighbor's ranches. The whole financing system used by Allis-Chalmers and other dealers for farmers will have to be changed and classified by a code amendment if the Court adopts the *changes* asked for by appellants. It will still have to be determined whether the use at the time of making the papers or at the time of filing

governs. The farm credit flows *where there is certainty* and backs away from uncertainty.

If the Court amends Section 9401, banks and other credit institutions lending to farmers will face an uncertain situation which will affect the readiness with which loans will be made to people buying farm equipment.

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## XI

### DIVISION 9 OF THE CALIFORNIA COMMERCIAL CODE, SECURED TRANSACTIONS, IS CLEAR IN THE DIRECTIONS GIVEN TO OBTAIN SECURITY

The California Commercial Code, Division 9, contains remarkably clear directions to anyone seeking security on personal property.

Sections 9301-9318 set forth priorities gained by complying with the provisions of Division 9 covering secured transactions.

Section 9402 sets forth *what is required* to be set forth in a financing statement.

Section 9401 tells interested persons *where to file* financing statements.

Section 9401 (3) takes care of equipment when there is a *subsequent change of use or residence* of the debtor, whichever controlled the original filing. The first use and first residence continue effective even though thereafter changed.

Section 9109 defines all classes of goods as either (1) equipment, (2) farm products, or (3) inventory.



Inventory is, of course, things *held for sale* in the course of business where the priority of a financing statement would be impractical to apply to a purchaser in the ordinary course of business.

The legislature also included in inventory, articles that are leased. *It is to be recalled that the harvesters in this case were not leased, but were operated under a contract for harvesting by the owner.*

Inventory also includes things that are sold under contracts of service, such as the nails, lumber and other items furnished by a contractor in building a building. The items are sold but they are sold indirectly in the furnishing of the service and they are inventory because they are held for sale.

Section 9103 is the *conflict of laws section*. It governs equipment brought into this state from another state. Among the items enumerated is commercial harvesting equipment. Section 9103 is clear. If the chief place of business of the debtor is in this state, this division (Division 9) then governs the validity and perfection of a security interest, and in effect, the proper filing. If the place of business of debtor is in another state, the jurisdiction where the chief place of the business of the debtor is shall govern.

Appellants argue as though Section 9103 directed the filing for items brought in this state by a debtor to be with the Secretary of State. It only requires a reading of the Section to discover that the legislature did not say in Section 9103 where the filing was to be, but did say the filing is to be governed by Division 9.

Since Section 9401, the place to file, clearly directs the filing for equipment used in farming operations, the rules set forth in Section 9401 apply when the debtor is a resident of this State.

Appellants do not like the word "debtor" selected by the legislature and asks this Court to substitute a narrower word in Section 9401(a). In place of the word "debtor" selected by the legislature, appellants ask this Court to say "farmer using the equipment in his own farming operations."

The word "debtor" is used as the defining word in Section 9401, the place of filing, in Section 9103, the conflict of laws section, and in Section 9109, the definitions section. It is interesting and informative to observe that in all these sections the word "debtor" had no limiting words set forth after it. The exception is in Section 9109 (3), farm products. Farm products, as defined by subsection (3) of Section 9109, only "if they are in the possession of a debtor" and then the limiting words, "engaged in raising, fattening, grazing or other farming operations." That is to say, when the goods move out of the hands of the farm producer into the market, they are no longer farm products.

The point is that when the legislature found a limitation to be placed on the word "debtor," they said so as in Section 9109 (3) just described. In all of the other places, in all the other sections, the word "debtor" was used without limiting words. As the legislature used limiting words when needed as in Section 9109 (3) to release farm products from the

security rule when they move into the open market, it would seem to follow that where they used the word “debtor” without limiting words, they did not feel that limiting words were necessary or proper.

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## XII

### WHAT THE COMMERCIAL CODE NEEDS IS READING, NOT AMENDMENT

In my own experience, I found that what I needed to do was to examine the pertinent Commercial Code sections for what they direct you to do. The directions in the Commercial Code need reading and following and do not need an amendment as an escape route for something that was not done as directed by the Code.

In this case, all of the answers are ultimately found in Section 9401, “Where to File.”

Section 9109, the definition and classification section, makes clear that harvesters are “equipment.” No other part of the definition section detracts or limits the language as used in Section 9401.

In appellants’ brief, they find the words “debtor engaged in raising, fattening, grazing or other farming operations” to be limiting words applied to equipment, although they are not used in the paragraph defining equipment, and then they carry that limitation over to Section 9401 as though subsection (3) of Section 9109 read not “or other farming operations” as it reads, but “or operations by a farmer” which it

does not read, and then in some manner this change of language is brought to bear on Section 9401.

The fact that the appellants did not follow the directions of the Code sections should not be used to penalize the entire agricultural equipment sales financing by creating uncertainties where the directions are now plain and certain.

Dated, Madera, California,

April 8, 1968.

Respectfully submitted,

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By SHERWOOD GREEN,

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*Allis-Chalmers Manufacturing Company.*

#### CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

SHERWOOD GREEN,

*Attorney for Amicus Curiae*

*Allis-Chalmers Manufacturing Company.*

**(Appendix Follows)**

## Appendix





**Appendix**

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United States District Court  
Eastern District of California

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No. F-2609  
In Bankruptcy

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In the Matter of Benjamin F. Laymon, Bankrupt.
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**STIPULATION AS TO FACTS**

It is hereby stipulated by and between Sherwood & Denslow Green, as attorneys for Allis-Chalmers Manufacturing Company, and Jarrett & Enmark, as attorneys for John G. Groves, the Trustee, in the above-entitled cause as follows:

1. This stipulation is entered into after submission of a motion made by Allis-Chalmers Manufacturing Company for an order establishing the priority created by a conditional sales contract and financing statement filed in the office of the County Recorder of the County of Fresno, being the County of residence of the debtor, a farmer.



2. That Benjamin F. Laymon is a bankrupt and that the proceedings in bankruptcy are pending in the above-entitled Court.

3. That Benjamin F. Laymon, at all times herein set forth, was and is a resident of the County of Fresno, and that the matters herein stipulated to were heard before Referee Charles F. Hamlin.

4. Allis-Chalmers Manufacturing Company, Farm Equipment Division, is engaged in the sale of farm equipment manufactured by Allis-Chalmers Manufacturing Company. That the Division has more than 3,000 dealers in the United States.

5. That it is the practice of the Division to have the dealers file financing statements covering farm equipment in the County of the residence of the farmer who enters into a conditional sales contract and financing statement with the dealer.

6. That the conditional sales contracts and financing statements are subsequently transferred to Allis-Chalmers Manufacturing Company, Farm Equipment Division.

7. That the Division now holds one and a half million dollars worth of papers of this type in California where the recording was made on the sale of equipment used in farming operations in the office of the County Recorder of the County where the debtor resides.

8. In this case, Mayer Equipment Co., a dealer of Allis-Chalmers Manufacturing Company at Fresno, entered into a conditional sales contract with Benja-

min F. Laymon prior to his entering into bankruptcy. The conditional sales contract and the financing statement were duly executed by Benjamin F. Laymon covering four windrowers and three farm tractors.

9. That the financing statement was timely filed in the office of the County Recorder of the County of Fresno and no issue is raised as to the form of the conditional sales contract or the financing statement or the timely filing. A financing statement was not filed with the Secretary of State.

10. That Benjamin F. Laymon was, at the time of the making of the transaction and the execution of the conditional sales contract and the financing statement, a farmer engaged in the farming of 640 acres of alfalfa on his own ranch in Fresno County.

11. That said equipment was first used on the ranch of Benjamin F. Laymon, the aforescribed 640 acres, by the debtor in his own farming operation.

12. That subsequent to the first use, the debtor used said equipment principally as a contractor on other farms and was paid for such services by the acre. That the sales agent of Mayer Equipment Co. was informed that Benjamin F. Laymon would use said equipment on other farms as an operation where Benjamin F. Laymon furnished the equipment and the labor on contract for a stipulated price.

13. That the acreage where said equipment was subsequently used off of Benjamin F. Laymon's own farm exceeded the 640 acres farmed by Benjamin F. Laymon.

14. That Benjamin F. Laymon occasionally returned said equipment to his own farm for use thereon.

15. That Allis-Chalmers Manufacturing Company, Farm Equipment Division, duly filed a Creditor's Claim setting forth and claiming the security created by the conditional sales contract and financing statements executed by Benjamin F. Laymon covering the equipment in question.

16. That thereafter the duly appointed and acting trustee in the above-entitled bankruptcy claimed that the recording of said financing statement in Fresno County, the County of the residence of the debtor, did not create a priority over the general creditors.

17. That the trustee's claim was a conditional claim, in effect, if the ruling of Judge Crocker now on appeal in Action No. 22194 is affirmed, then the trustee will not contest the validity of the priority of the financing statement in the bankruptcy of Benjamin F. Laymon. If Judge Crocker is reversed, the ruling of the Ninth Circuit Court, if found to be applicable, will determine the priorities as between the general creditors and the claim of Allis-Chalmers Manufacturing Company for priority based on its conditional sales contract and financing statement.

In addition to the foregoing stipulated set of facts, it is further stipulated that the Referee may withhold his decision on the Motion to establish the priority of Allis-Chalmers Manufacturing Company by reason of the recording of the financing statement as herein set

forth until fifteen (15) days after the decision of the Ninth Circuit Court in Action No. 22194, and that the trustee, through his attorney, or Allis-Chalmers Manufacturing Company, through its attorneys, may present, during said fifteen (15) day period, any arguments or motions that they deem applicable by reason of the language of the decision when rendered.

Dated, April 1, 1968.

Sherwood & Denslow Green

By /s/ Sherwood Green

Sherwood Green

Attorneys for Allis-Chalmers

Manufacturing Company.

Jarrett & Enmark

By /s/ J. Roderick Jarrett

Attorneys for John G. Groves,

Trustee.

The foregoing Stipulation is hereby adopted and approved.

Dated: April 5, 1968.

Charles F. Hamlin

Referee in Bankruptcy.

